



DEPARTMENT OF EMPLOYMENT AND TRAINING

**BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201**

(301) 383-5032

BOARD OF APPEALS

THOMAS W. KEECH
Chairman

HAZEL A. WARNICK
MAURICE E. DILL
Associate Members

SEVERN E. LANIER
Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

STATE OF MARYLAND

HARRY HUGHES
Governor

— DECISION —

Decision No.: 247-BR-85

Date: April 19, 1985

Appeal No.: 10430

S. S. No.: 210 BR 85

Claimant: Donald E. Punt
Route 5, Box 77
Hagerstown, MD 21740

L.O. No.: 4

Appellant: CLAIMANT

Employer: Taco Bell Restaurant
13711 Gales Road
Woodbridge, VA 22191
ATTN: Paul Warren
District Manager

Issue: Whether the claimant was discharged for gross misconduct, connected with his work, within the meaning of §6(b) of the law.

— NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON May 19, 1985

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Appeals Referee.

The employer provided no evidence whatsoever of the allegation that the claimant falsified his employment application.

The employer's evidence regarding the whipped cream incident was also very weak, as the employer's witness had no personal knowledge of the incident in question and merely read from a document identified only as the "termination worksheet." On the other hand, the Appeals Referee had good reason for not believing the testimony of the claimant, as it was contradicted by his previous statement recorded on the DHR/ESA 221 when the claim was first filed.

The Board finds as a fact that the claimant did contribute money toward the purchase of whipped cream to be used in a friendly fight between two employees after work hours. The Board perceived no misconduct at all in this behavior, but the claimant also allowed the fight to take place on the work premises (although near the back door). The claimant should not have allowed this to take place on the premises, and for the claimant as manager to allow this to happen was misconduct. This conduct, however, was not a "deliberate and willful disregard of standards of behavior, which his employer has a right to expect, showing a gross indifference to the employer's interests." The conduct, therefore, is not gross misconduct as it is defined in §6(b) of the law.

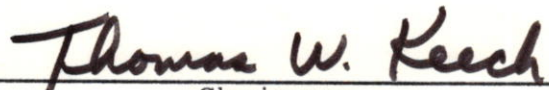
For the above reasons, the Board will reverse the finding of gross misconduct under §6(b) and impose instead a penalty under §6(c) of the law.

DECISION

The claimant was discharged for misconduct, connected with the work, within the meaning of §6(c) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits from the week beginning August 19, 1984 and the seven weeks immediately following.

The decision of the Appeals Referee is reversed.

This denial of unemployment insurance benefits for a specified number of weeks will also result in ineligibility for Extended Benefits and Federal Supplemental Compensation, unless the claimant has been employed after the date of the disqualification.



Chairman



Associate Member

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Legal Aid Bureau, Inc.

P. O. Box 408

Fredonia, MD 21701

ATTN: Melinda Verweil

UNEMPLOYMENT INSURANCE - HAGERSTOWN



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

STATE OF MARYLAND
HARRY HUGHES
Governor

(301) 383-5040

BOARD OF APPEALS

THOMAS W. KEECH
Chairman

HAZEL A. WARNICK
MAURICE E. DILL
Associate Members

SEVERN E. LANIER
Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Claimant:	Donald E. Punt	Date: mailed	Nov. 14, 1984
		Appeal No.:	10430
		S. S. No.:	
Employer:	Taco Bell Restaurant	L.O. No.:	04
		Appellant:	Claimanta

Issue: Whether the claimant was discharged for gross misconduct connected with his work within the meaning of Section 6(b) of the Law.

— NOTICE OF RIGHT TO PETITION FOR REVIEW —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE, OR WITH THE APPEALS DIVISION, **ROOM 515**, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON Nov. 29, 1984

— APPEARANCES —

FOR THE CLAIMANT:

Present via telephone 10/17/84
Hagerstown, Md.

FOR THE EMPLOYER:

Present via telephone,
10/17/84,
Represented by
Paul Warren,
District Manager

FINDINGS OF FACT

The claimant was employed by Taco Bell Restaurant from May 1984 until August 20, 1984 as a manager. At the time of his separation from employment, the claimant was earning \$200.00 per week.

The claimant was shift manager on the afternoon of August 19, 1984 when two employees had a whipped cream battle to celebrate the resignation of one of those employees. These employees were near the back door of the restaurant and off the clock. When the employer found out about the incident and the further fact that the claimant not only permitted it but contributed money toward the purchase of the whipped cream, the claimant was discharged for his lack of professionalism.

CONCLUSIONS OF LAW

Gross misconduct is defined as conduct which is a deliberate and willful disregard of the standards of behavior which an employer has a right to expect, showing a gross indifference to the employer's interest. It is concluded from the evidence presented at the Appeal Hearing that the claimant's behavior demonstrates a deliberate and willful disregard of standards which the employer has a right to expect, as to amount to gross misconduct within the meaning of Section 6(b) of the Law. Therefore, the determination of the Claims Examiner under Section 6(b) of the Law, will be affirmed.

DECISION

The claimant was discharged for gross misconduct connected with his work within the meaning of Section 6(b) of the Maryland Unemployment Insurance Law. He is disqualified from receiving benefits for the week beginning August 19, 1984 and until he becomes reemployed and earns at least ten times his weekly benefit amount (\$1,330.00) and thereafter becomes unemployed through no fault of his own.

The determination of the Claims Examiner is affirmed.


Seth Clark
Appeals Referee

Date of hearing: Oct. 17, 1984

jlt

(7420B-B. Massey)

Copies mailed on Nov. 14, 1984 to:

Claimant

Employer

Unemployment Insurance - Hagerstown